

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Carl Haynes,

Plaintiff,

v.

Home Depot U.S.A., Inc., and Does 1-10,

Defendant.

Case No.: 15-cv-01038-CAB-JLB

ORDER TAXING COSTS

Upon application of Home Depot U.S.A., Inc, a hearing for taxation of costs was held on December 2, 2021. Marie C. Mirch representing plaintiffs, and John D. Hayashi, representing defendants, appeared.

Local rule 54.1(a) requires that the bill of costs “must itemize the costs claimed, and must be supported by a memorandum of costs, an affidavit of counsel that the costs claimed are allowable by law, are correctly stated, and were necessarily incurred, and copies of the invoices for requested costs.” Defendant included the memorandum of costs in the declaration, itemization, and a signed affidavit in the bill of costs (ECF No. [134]). Plaintiff filed a timely objection to the initial bill of costs. [176] [182] During the hearing, the Clerk requested supplemental documents be filed in regards a request noted on the Bill of Cost chart for Docket fees under 28 U.S.C. § 1923. Filing party attorney waived the supplemental request and forfeited taxing the corresponding costs.

1 On 5/23/2016, there was a Bill of Cost filed by Defendants. (ECF [58]) On
2 6/28/2016, the Clerk issued an Order taxing costs against the Plaintiff's in the amount of
3 \$3,306.40. (ECF [69]) There has been no other Order or documentation vacating this first
4 Order Taxing Costs or invalidating the costs that were taxed. On 8/16/2021, there was
5 another Bill of Costs filed by the Defendants [176], and a timely objection by the Plaintiff
6 [182]. However, the hearing was vacated due to the then pending Motion for New Trial.
7 The Bill of Costs was then refiled on 10/18/2021 [194]. Though there was no renewed
8 objection filed, the timely objection previously filed was considered in the analysis
9 during the taxation of cost hearing.

10 The local rules only allow for costs that were not previously awarded in the first
11 Order Taxing Cost [69], as costs cannot be double taxed. As noted in the objection, this
12 request includes the \$3,306.40 previously taxed and an additional \$1,377 incurred
13 through the jury trial and judgment entered on August 2, 2021. (page 2)

14 The defendants sought recovery for \$400 under Fees of the Clerk, \$86.40 for copy
15 costs, \$2,820 for copies of transcripts from depositions of Carl Haynes (Vol. I, II, III); all
16 of which were taxed in the first Order Taxing Costs [69]. Those fees will not be
17 considered in this order.

18 Defendant requests recovery for copy costs, totaling \$407.30. Local rule 54.1(b)(6)
19 allows recovery for copy costs, pending one of the six listed criteria are met.
20 Additionally, local rule 54.1(b)(6)(c) requires documentary evidence describing the
21 documents, copies, whom they were provided, the number of pages, the cost per hour and
22 use. In the declaration, defendant counsel cites local rule 54.1(b)(6), stating that the
23 following fees were incurred for exemplification and the costs of making copies of any
24 materials where the copies were necessarily obtained for use in the case. The itemization
25 and memorandum of cost meet the request requirements, indicating the trial exhibit
26 binders for both the court and the plaintiff. In the objection, counsel noted that the local
27 rule does not mention binders or tabs, but only paper costs. The need for binders and tabs
28 for the trial exhibit binder is inherent in the costs and the rule does not prohibit the

1 recovery for this. For these reasons, the request for these *new* copy costs will be granted,
 2 totaling \$407.30.

3 Defendant requests recovery for deposition transcripts, totaling \$950.50. Under
 4 local rule 54.1(b)(3), the original plus one copy of any deposition necessarily obtained for
 5 use in the case is allowable. In the declaration, counsel confirmed these transcripts were
 6 necessarily obtained for use in the case. (page 2) Plaintiff counsel objected to this
 7 deposition transcript of Courtney Korkow, as it was for discovery purposes only, not for
 8 trial, and it was taken after the defendants added Ms. Korkow as a witness at the close of
 9 discovery. (page 5) The defense counsel noted in the hearing that Ms. Korkow was added
 10 as one of their witnesses and she did testify at trial. According to local rule 54.1(b)(3), it
 11 was reasonably anticipated to be used as trial prep because she was called as a witness by
 12 both parties. Though the original deposition cost was paid for by the Plaintiff, the
 13 defendant is only requesting recovery for the cost of the certified copy of the transcript.
 14 The request for recovery of this cost is granted.

15 Costs are taxed as follows:

<i>Description</i>	<i>Amount(s) Requested</i>	<i>Amount(s) Taxed</i>
Fees of the clerk	\$400.00	\$00.00
Fees for service of summons and subpoenas		
Fees for printed or electronically recorded transcripts		
Fees and disbursements for printing		
Fees for witnesses		
Fees for exemplification and copies	\$493.70	\$407.30
Docket fees under 28 U.S.C. § 1923	\$20.00	\$00.00
Costs as shown on mandate of Court of Appeals		
Compensation of court-appointed experts		
Compensation/costs of interpreters under 28 U.S.C. 1828		
Other costs as itemized:	\$3,770.50	\$950.50

TOTAL COSTS TAXED in favor of Home Depot U.S.A., Inc	\$ 4,684.20	\$1,357.80
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Counsel's attention is called to Local Rule 54.1.h which provides in part that a motion to re-tax by any party, in accordance with Rule 54(d), FRCivP and Local Rule 7.1, shall be served and filed within seven (7) days after receipt of the Order Taxing Costs, or unless within the seven (7) day period the court permits the motion to be made orally.

Dated: December 30, 2021

John Morrill, Clerk of Court

s/J. Simmons
J. Simmons, Deputy Clerk